Supreme Court, U.S.
FILED
JAN 29 1996
CLERK

No. 95-841

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

ALBERT AKINS, *et al.*,
Petitioners,
v.
ZENECA, INC.; RHONE-POULENC, INC.; RHONE-POULENC BASIC CHEMICALS COMPANY; STAUFFER CHEMICAL COMPANY; INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO; LOCAL 912, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RESPONDENT INTERNATIONAL UNION OF OPERATING ENGINEERS IN OPPOSITION

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INTRODUCTORY NOTE

The Petitioners have, in scattershot fashion, raised a multiplicity of issues in their petition for *certiorari*. The Defendant/Respondent International Union of Operating

Engineers (hereinafter "International Union") will respond here to those questions which may involve the International Union and will not address itself to those questions which concern only the other Respondents.

STATEMENT OF THE CASE

The International Union briefly restates the relevant facts here. This case arises out of a plant closure. Stauffer Chemical Company formerly operated two separate production facilities in Mt. Pleasant, Tennessee known as the organic plant and the furnace plant. (A-33). At all times material hereto, the union which was the certified collective bargaining representative for the employees of both plants was Local 912, International Union of Operating Engineers (hereinafter "Local 912"), not the International Union. (*Id.*). Prior to 1982, there was a single collective bargaining agreement covering the organic and furnace plants. (*Id.*). In 1982, Stauffer and Local 912 agreed to separate the organic and furnace plants into two separate bargaining units, one for each plant, and to negotiate separate agreements for each plant. (A-34).

At the time the parties agreed to separate the bargaining units, Stauffer and Local 912 entered into a memorandum of agreement which has come to be known as the September 13, 1982 Memorandum. (*Id.*, at fn. 3). The September 13, 1982 Memorandum was incorporated by reference into the 1982 collective bargaining agreements between the parties. (A-36). It provided that, in the event of a reduction in force at either facility, the employees of that facility could exercise their seniority to displace less senior employees at the other facility. (A-34, at fn. 2). The International Union was not a party to any of the collective bargaining agreements between Stauffer and Local 912 nor was it a party to the September 13, 1982 Memorandum. (A-34–A-37).

In 1985, Stauffer and Local 912 renewed both agreements for a three year period. (A-37). ICI Americas

(hereinafter "ICI") purchased Stauffer in 1987 and continued to operate both plants. (*Id.*). ICI assumed the obligations under the 1985 collective bargaining agreements for both facilities. (A-37). Later in 1987, ICI sold the furnace plant to Rhone-Poulenc (hereinafter "R-P"). (*Id.*). In 1988, both ICI and R-P entered into new, separate, collective bargaining agreements with Local 912 for a three year period. (A-40). Again, the International Union was not a party to these agreements. (*Id.*).

In June of 1990, R-P announced it was intending to close the furnace plant. (A-41). Shortly thereafter, the chief officer for Local 912, Business Manager James Kincade, wrote the General President of the International Union, Frank Hanley. (A-42). In his letter, Mr. Kincade described the 1982 Memorandum, indicated that one of the plants was scheduled to close, and asked whether, if the employees at one of the plants proposed to do away with the Memorandum, which employees would be entitled to vote on such a proposal under the provisions of Article XXIV, Subdivision 11, Section (e) of the International Union Constitution.[1] (A-236). In writing this letter, Mr. Kincade was requesting that General President Hanley exercise his authority, under Article VI,

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[1] Article XXIV, Subdivision 11, Section (e) provides, in pertinent part:

> Proposed collective bargaining agreements and modifications thereof may be negotiated for Local Unions by the Business Manager, by a committee, by the Local Executive Board, or by the Business Representative. Such agreements and modifications thereof shall not be executed until they have been presented at the next membership meeting following the negotiation of the proposed agreement and have been approved by the membership affected, provided, however, that a Local Union may delegate to its Local Executive Board or to its bargaining committee authority to approve such agreements and modifications without such submission of the same to vote of its membership.

(A-23 - A-24).

Section 2 of the International Union Constitution, "to interpret the provisions of the Constitution and decide questions of law arising thereunder." [2] (*Id.*).

By its terms, Article XXIV, Subdivision 11, Section (e) applies only to "proposed collective bargaining agreements and modifications thereof." (A-366). In his letter, Mr. Kincade did not mention any actual modification to the 1982 Memorandum which had been proposed by either the relevant employer or by Local 912, and the rights of all concerned were governed by the existing Memorandum. (A-326). Under these circumstances, Mr. Hanley treated the question as a hypothetical one. By letter dated July 27, 1990, he replied to Mr. Kincade that the union members' rights were already governed by the cross-bumping agreement and Article XXIV, Subdivision 11, Section (e), which applied only to "proposed" modifications of collective bargaining agreements, was inapplicable. (A-248).[3]

On June 11, 1991, ICI and Local 912 entered into a new collective bargaining agreement for the organic plant which deleted all references to the September 13, 1982 Memorandum of Agreement. (A-44). Subsequently, two of the Petitioners, Terrance Nevette and Waylon Carroll, transmitted by facsimile a letter with exhibits to Mr.

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[2] With respect to this authority to interpret the Constitution, as well as with respect to other powers and duties of the General President, Article VI, Section 5 of the International Union Constitution vests the International Union General President with "unlimited discretion in the application and administration of his powers and duties."

[3] The question of membership ratification was irrelevant in any event, because the authority to approve modifications to the relevant agreements had been delegated by the Local Union to the bargaining committees of each plant, pursuant to the proviso contained in Article XXIV, Subdivision 11, Section (e) which allows the Local to delegate the approval function to the Local Executive Board or bargaining committee in lieu of membership ratification. (A-24 - A-25).

Hanley. (A-45–A-46). The letter described the situation involving ICI, R-P, Local 912, and the memorandum of agreement and accused Local 912 of a conflict of interest. (A-273). It also attached a copy of a second stage grievance against the two employers. (*Id.*).

Mr. Hanley forwarded the letter to Mr. Kincade requesting a reply. After receiving Mr. Kincade's response, he replied to Mr. Nevette and Mr. Carroll by letter dated August 5, 1991. (A-291). He stated that since the International Union was not a party to any of the collective bargaining agreements mentioned by Mr. Nevette and Mr. Carroll, the International Union was without authority to alter or amend the terms of such agreements or intervene in the matter described in their letter. (*Id.*).

In November 1991, sixty-eight employees of R-P filed suit against the Defendant/Respondents. They alleged *inter alia*, violations of § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, including breaches of the duty of fair representation and of the International Union's Constitution. The United States District Court for the Middle District of Tennessee dismissed certain of these claims in response to Defendants' Motions for Summary Judgment, and the rest of the claims in response to the Defendants' Motion for a Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50(b). As to the International Union, the District Court, on summary judgment, found that the International Union was not the Plaintiffs' exclusive bargaining representative and therefore did not owe any of the Plaintiffs a duty of fair representation. The District Court allowed the constitutional claims against the International Union to proceed to trial. After the close of Plaintiffs' case, the District Court held, in response to the Rule 50(b) motion, that the International Union did not breach its Constitution. On appeal, the Sixth Circuit affirmed the District Court's holdings concerning the International Union in all respects. Specifically, with respect to the questions concerning interpretation of the International Union's Constitu-

tion, the court of appeals held that the responses of the International Union's General President contained in his July 27, 1990 and August 5, 1991 letters were "not unreasonable." (A-26 and A-27).

ARGUMENT

To the extent their arguments can be discerned, the Petitioners appear to raise two issues concerning the International Union: 1) the Sixth Circuit incorrectly found that the International Union had not breached its Constitution; and 2) the Sixth Circuit incorrectly failed to find the International Union automatically responsible for the actions of its autonomous Local 912. The arguments made by the Petitioners in support of these contentions are without merit. As to both of these matters, the court of appeals' decision is entirely correct and entirely consistent with this Court's decisions. The *certiorari* petition should therefore be denied.

I. THE SIXTH CIRCUIT CORRECTLY DETERMINED THAT THE INTERNATIONAL UNION DID NOT BREACH ITS CONSTITUTION.

A. At page 22 of their Petition, Petitioners claim that the Sixth Circuit's determination that the International Union did not breach its Constitution is in conflict with this Court's decision in *Wooddell v. International Bhd. of Elec. Workers*, 502 U.S. 93 (1991) and would render that decision meaningless. This contention is clearly incorrect. In *Wooddell*, this Court held that § 301 creates a federal cause of action under which union members may sue their union for breach of the union's constitution, stating:

> Members of a collective-bargaining unit are often the beneficiaries of such interunion contracts [union constitutions], and when they are, they likewise may bring suit on these contracts under § 301. [*Id.*, at 101.]

Here, contrary to the Petitioners' contentions, the court of appeals did not hold that § 301 did not allow the Petitioners to sue the International Union to enforce the union's constitution. Rather, the court of appeals applied *Wooddell*, stating, with respect to the claims for breach of the union's constitution, that:

> . . . [W]e agree that plaintiffs, as third-party beneficiaries of the IUOE Constitution, may sue to enforce the provisions of that constitution, *see Wooddell v. International Bhd. of Elec. Workers*, 502 U.S. 93, 98-99 (1991) . . . [A-23]

However, the court went on to determine that, *on the merits*, the International Union's actions did not breach any of the constitutional provisions which Petitioners alleged were breached. Thus, there is absolutely no conflict between *Wooddell* and the court of appeals' decision. Therefore, the *certiorari* petition should be denied.

B. Examining the specifics of the constitutional claims advanced by the Petitioners only reinforces the above-stated conclusion. Petitioners contend that the International Union breached Article VI, Sections 2, 3, and 5 of its Constitution. Article VI of the Constitution generally articulates the powers and duties of the International Union's chief elected officer, its General President: Section 2 provides that the General President "shall also be empowered to interpret the provisions of the Constitution and decide questions of law arising thereunder"; Section 3 gives the General President the authority, under certain specifically defined circumstances and pursuant to a statutorily mandated procedure, to invoke and administer "International Supervision" (the Constitution's term for trusteeship) and certain other peremptory powers; and Section 5 provides, *inter alia*, that the General President shall be strictly accountable and responsible for the faithful performance of his duties. As the Sixth Circuit correctly held, the International Union breached none of these provisions in this case.

Any review of Petitioners' constitutional contentions must start, as the Sixth Circuit's did, with the premise that the courts must defer to a union's own interpretation of its constitution so long as the interpretation is not unreasonable. *Maher v. International Bhd. of Elec. Workers*, 15 F.3d 711, 714 (7th Cir. 1994); *Millwright Local No. 1079 v. UBCJA*, 878 F.2d 960, 962 (6th Cir. 1989). Here, as the Sixth Circuit correctly determined, the International Union's constitutional interpretations were "not unreasonable."

Specifically, as to the claim for breach of Article VI, Section 2, it was not unreasonable for the General President, pursuant to his discretionary authority to interpret the Constitution, to inform Local 912 in his July 27, 1990 letter that Article XXIV, Subdivision 11, Section (e) did not apply to the situation presented by Local 912's Business Manager because there was no "proposed agreement or modification thereof" under consideration. Moreover, to the extent Petitioners' claim is that General President Hanley's letter was nonresponsive, there can be no contention that his alleged nonresponsiveness constituted a breach, for, as the Sixth Circuit held, nothing in Section 2 "obligated Hanley to interpret the constitution on demand." (A-26).

As to the claim for breach of Article VI, Section 3, Petitioners abandoned this claim at trial. (A-27). Although Petitioners try to revive it here, see footnote 8 on page 23 of their Petition, a *certiorari* petition is not the place to resurrect abandoned claims *ex post facto*. Moreover, as the Sixth Circuit correctly determined, even if the claim was not abandoned, the General President's response to the letter from two of the Petitioners was not unreasonable. The General President's decision to decline to exercise his authority to place a Local Union under trusteeship and to decline to insert the International Union into the dispute between Local 912 and the Petitioners was in fact eminently reasonable. Petitioners ad-

vance no basis upon which this Court could base a reversal of that judgment. Here, the language in Article VI, Section 3 merely gives the General President the authority, but not the obligation, to impose International Supervision. Thus, there was not and cannot be a breach of that provision when the General President declines to exercise that discretionary authority. See *Brenner v. Local 514, United Brotherhood of Carpenters*, 927 F.2d 1283, 1292 (3rd Cir. 1991) (retention of regulatory and supervisory powers gives an international union a discretionary right rather than an obligation to intervene in local union affairs; before an obligation to intervene can be imposed the obligation must be contained in explicit constitutional language).

As to the claim for breach of Article VI, Section 5 of the Constitution, the Sixth Circuit found that the Petitioners had also waived this issue by not presenting any evidence to support it during the trial. (A-27, at fn. 8). Again, Petitioners attempt here to resurrect the abandoned claim and again such an attempt is clearly inappropriate.

Moreover, assuming *arguendo* that Petitioners have not waived this issue, it is completely unclear which aspect of Article VI, Section 5 Petitioners claim has been breached. Apparently, Petitioners argue that the provision of Article VI, Section 5 which mandates that the General President shall be strictly accountable and responsible for the faithful performance of his duties imposes a duty of fair representation upon the International Union towards Petitioners. However, as this Court has determined, see *Chauffeurs, Teamsters and Helpers Local 391 v. Terry*, 494 U.S. 558, 563 (1990), the duty of fair representation is a statutory duty which arises from the union's statutory exclusive authority under the National Labor Relations Act, 29 U.S.C. § 159(a), to represent all employees in a bargaining unit. It is not a contractual duty which can arise from the union's constitution. See *Erkins v. United Steelworkers of America*, 723

F.2d 837, 840 (11th Cir. 1984), *cert. denied*, 467 U.S. 1243 (1984). Thus, Petitioners' argument must fail.

Finally, Petitioners appear to contend that the International Union, as well as Local 912, breached Article XXIV, Subdivision 11, Section (e) which provides the manner in which Local Unions may negotiate and ratify collective bargaining agreements. The International Union has no obligations to Petitioners under this provision and thus could not have breached it. This issue therefore is also without merit.[4]

Thus, as the District Court and the Sixth Circuit correctly found that the International Union did not breach its Constitution, this Court should not grant the Petition on this issue.

II. THERE ARE NO "IMPORTANT ISSUES OF THE RESPONSIBILITY OF THE INTERNATIONAL UNION" REQUIRING REVIEW BY THIS COURT.

A. At page 24 of their Petition, Petitioners vaguely assert that this case presents "important issues of the responsibility of an International Union." The short answer to this assertion is that the actual responsibilities of an International Union are those spelled out in its

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[4] On this point, it should briefly be noted that Petitioners are once again selective in their reading of the International Constitution. Petitioners assert that collective bargaining agreements must be voted on by the membership pursuant to Article XXIV, Subdivision 11, Section (e). However, as Petitioners fail to mention, Article XXIV, Subdivision 11, Section (e) in fact authorizes Locals to ratify collective bargaining agreements in a number of different ways, one of which is by vote of the membership. However, the provision also authorizes a Local Union's membership to elect a negotiating committee and authorize such committee to negotiate and ratify the collective bargaining agreement without subsequent ratification by the membership. That had long been the practice of Local 912 and, as recognized by both the District Court (A-155 - A-156), and the Sixth Circuit (A-24 - A-25), was the procedure utilized at all times material to this case.

Constitution. As demonstrated above, the International Union did not breach its Constitution here.

If Petitions are attempting to argue that an International Union is automatically responsible for the unilateral actions of its autonomous Local Unions, that question has previously been decided by this Court. In *Carbon Fuel Co. v. United Mine Workers of America*, 444 U.S. 212 (1979), this Court determined that the common law of agency applied to the question of the International Union's responsibility. In the absence of evidence that the International Union instigated, supported, ratified, or encouraged the Local's acitvity, the International was held not to be responsible for such activity. *Id.*, at 218. See also, *Shimman v. Frank*, 625 F.2d 80, 97-99 (6th Cir. 1980). Here, the Sixth Circuit applied this standard and determined that Petitioners had failed to present any evidence sufficient to establish International Union responsibility for the Local's actions. (A-23, at fn. 7). That conclusion is clearly correct and nowhere in their Petition do Petitioners advance adequate reasons for this Court to review either the standard applied by the Sixth Circuit or the conclusions reached upon application of that standard. Therefore, their Petition should be denied on this issue as well.

CONCLUSION

For the reasons stated above, this case presents no issues worthy of this Court's review. Accordingly, the petition for *certiorari* should be denied.

Respectfully submitted,

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